City of Seattle

Gregory J. Nickels, Mayor
Department of Design, Construction and Land Use
D. M. Sugimura, Director

CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR
OF THE DEPARTMENT OF DESIGN, CONSTRUCTION AND LAND USE

Application Number:	2002115
Applicant Name:	Brian Todd for Triad Pier 70 LLC
Address of Proposal:	2801 Alaskan Way

SUMMARY OF PROPOSED ACTION

Mater Use Permit for the replacement of an existing moorage float that is currently 728 sf with a new moorage float that is 1,414 sf and for the installation of two new moorage floats, two new platforms, three new ramps and 44 new steel piles at Pier 70 in Elliott Bay. One of the new moorage floats will be 1,912.5 sf in size and will be located on the northwest portion of the site. The second new moorage float will be 2,762.5 sf in size and will be located at the southern portion of the site. All new floats are specially designed to minimize width, maximize light transmission, and accommodate requirements pursuant to the Americans with Disabilities Act (ADA) and to meet minimum structural engineering requirements for expected vessel

The following approvals are required:

Shoreline Substantial Development Permit: For development in the shoreline environment. (Section 23.60.020 Seattle Municipal Code)

SEPA - Environmental Determination - Chapter 25.05 SMC

SEPA DETERMINATION: [ ] Exempt [ ] DNS [ ] MDNS [ ] EIS

[X] DNS with conditions

[ ] DNS involving non-exempt grading or demolition or involving another agency with jurisdiction

BACKGROUND DATA

Site Location and Description

The proposal site is located at 2801 Alaskan Way on the north end of Elliott Bay in downtown Seattle. Currently there is a dock measuring approximately 538-ft by 250-ft at this site with a floating pier on the north end of the dock that is 728 sf. This property is in the Urban Harborfront shoreline environment. The property is currently used for vessel moorage and for office and restaurant uses.

Zoning

Downtown Harborfront 1/45 with the Urban Harborfront (UH) Shoreline Master Program designation.

Area Development

North: Downtown Harborfront 1/45; and Urban Harborfront shoreline designation
East: Downtown Harborfront 2/65 Urban Harborfront shoreline designation
South: Downtown Harborfront 1/45; and Urban Harborfront shoreline designation
West: Elliott Bay

Proposal Description

The applicant proposes to replace an existing moorage float that is currently 728 sf with a new moorage float that is 1,414 sf and to install two new moorage floats. One moorage float will be on the northwest portion of the site and it will be 1,912.5 sf and the other moorage float will be on the southern portion of the site and it will be 2,762.5 sf. Additionally, two new platforms, three new ramps and 44 steel piles at Pier 70 in Elliott Bay are also proposed. All new floats are specially designed to minimize width, maximize light transmission, and accommodate requirements pursuant to the Americans with Disabilities Act (ADA) and to meet minimum structural engineering requirements for expected vessel and extreme weather conditions. The design achieves 41% open area. Pultruded I-bar fiberglass grating will be used over the entire surface of floats. The grating is gray, 1.5 inches tall with 40% open area and meets ADA opening requirements. Floats will be secured in place by 12.75 inch diameter steel piles. The float on the northeast portion of the site is intended to moor a boat from the Argosy cruise line and the two additional floats are intended to provide a usable transient moorage for patrons of the restaurants, offices and retail businesses located on the renovated Pier 70, as well as for other commercial uses in the Seattle downtown harborfront.

The new floats will cover approximately 6,069 square feet of tideland. The floats will be tethered to new pilings at the pier perimeter. Approximately 44 piles will be placed in Elliott Bay to tether the floats.

Public Comment

No comments were received during the comment period that ended on April 28, 2000.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT

Section 23.60.030 of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads: *A substantial development permit shall be issued only when the development proposed is consistent with:*

A. The policies and procedures of Chapter 90.58 RCW

B. The regulations of Chapter 23.60; and

C. The provisions of Chapter 173-27 WAC

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.

A. The Policies and Procedures of Chapter 90.58 RCW

Chapter 90.58 RCW is known as the Shoreline Management Act of 1971. It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy aims to protect against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting public rights of navigation and corollary incidental rights. Permitted uses in the shorelines shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle and other jurisdictions with shorelines adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60 that also incorporates the provisions of Chapter 173.27 WAC. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions. As the following analysis will demonstrate, the subject proposal is consistent with the procedures outlined in RCW 90.58.

B. The Regulations of Chapter 23.60

Chapter 23.60 of the Seattle Municipal Code is known as the "Seattle Shoreline Master Program". In evaluating requests for substantial development permits, the Director must determine that a proposed use meets the approval criteria set forth in SMC 23.60.030 (cited above). Development standards of the shoreline environment and underlying zone must be considered, and a determination made as to any special requirements (shoreline conditional use, shoreline variance, or shoreline special use permit) or conditioning that is necessary to protect and enhance the shorelines area (SMC 23.60.064). In order to obtain a shoreline substantial development permit, the applicant must show that the proposal is consistent with the shoreline policies established in SMC 23.60.004, meets the development standards for all shoreline

environments established in SMC 23.60.152 as well as the criteria and development standards for the shoreline environment in which the site is located, any applicable special approval criteria and the development standards for specific uses.

The site is classified as a waterfront lot (SMC 23.60.924). The shoreline designation for the site is Urban Harborfront (UH) (SMC Subchapter XII). Moorage piers are permitted in the Urban Harborfront environment.

SMC 23.60.004 - Shoreline Policies

The Shoreline Goals and Policies which are part of the Seattle Comprehensive Plan's Land Use Element and the purpose and locational criteria for each shoreline environment designation contained in SMC 23.60.220 must be considered in making all discretionary decisions in the shoreline district. The purpose of the UH environment is stated in SMC 23.60.220.C 8. The applicable sections of these regulations to the current proposal are: to facilitate the revitalization of Downtown's waterfront, and provide opportunities for public access and recreational enjoyment of the shoreline.

SMC 23.60.064.- Procedures for Obtaining Shoreline Substantial Development Permits

The proposed project is a permitted use in both the UH environment (SMC 23.60.660) and the underlying Downtown Harborfront 1/45 zoning district (SMC 23.49. Subchapter X). As designed, the proposal conforms to the general development standards and the requirements of the underlying Downtown Harborfront 1/45 zone and UH shoreline environment.

SMC 23.60.152 - Development Standards for all Environments

These general standards apply to all uses in the shoreline environment. They require that design and construction of all uses be conducted in an environmentally sound manner, consistent with the Shoreline Management Program and with best management practices for the specific use or activity. All shoreline development and uses must in part:

1) minimize and control any increases in surface water runoff so that receiving water quality and shore properties are not adversely affected;

2) control erosion during project construction and operation;

3) be located, designed, constructed, and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas, including but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes;

4) be located, designed, constructed and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, littoral drift, sand movement, erosion and accretion;

5) be designed, constructed and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area;

6) be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization landfills, levees, dikes, groins, jetties, or substantial site regrades.

Additionally, in respect to submerged public right-of-ways the following general standards apply (SMC 23.60.152 Q): The way in which this project complies with each of these specific general standards is provided after each standard.

1) *All structures shall be floating except as permitted in subsection Q2 below*;

   All piers are floating. Pile structures will be installed to secure the new and replaced piers.

2) *Piling and dolphins may be permitted to secure floating structures only if the structures cannot be safely secured with anchors or with pilings or dolphins located outside of the right-of-way*;

   The proposed moorage floats must be secured with pilings for safety purposes. The piling are proposed to be located adjacent to the existing pier and on the southernmost edge of the Broad Street submerged right-of-way.

3) *The maximum height of structures shall be fifteen feet (15')*;

   The height of the proposed moorage floats will be 2-ft

4) *Structures shall not occupy more than thirty-five (35) percent of the right-of-way and shall not occupy more than forty (40) percent of the width of the right-of-way*;

   The submerged Broad Street right-of-way is 58,241 sf and the floats proposed for the northern portion of the site are 3,326.5 sf, which is 5.7 percent of the submerged right-of-way.

5) *A view corridor or corridors of not less than fifty (50) percent of the width of the right-of-way shall be provided and maintained; and*

The new and replaced floats will be 10.6 ft wide and 2-ft tall therefore the view corridor is being maintained at this site.

6) *An open channel, unobstructed by vessels or structures for access to and from the water for public navigation and for access to adjacent properties shall be maintained.*

   The Broad Street right-of-way is 120-ft wide and the floats will be 10.6 feet wide. Boats that will moor at this site will be approximately 10 to 40 feet in width. Therefore

based on these figures this proposal will potentially block 42 percent of the ROW leaving approximately 70-ft of the ROW open for public navigation and for access to adjacen

The proposed replacement of an existing float, two (2) new moorage floats, two (2) platforms, three (3) ramps and forty-four (44) steel piles with the mitigation provided is consistent with these general standards for development within the shoreline area, thereby minimizing any adverse impact to the shoreline environment, to water quality, to the natural shoreline processes, and the surrounding land and water uses.

SMC 23.60.690 - Development Standards for the UH

The development standard for the UH environment pertinent to this proposal concerns lot coverage (SMC 23.60.694) and side setbacks (SMC 23.60.696).

The lot coverage regulations for the UH shoreline environment require that structures, including floats and piers, not occupy more than fifty (50) percent of the submerged land of any lot, except as modified by subsection C. This section states that piers may exceed permitted lot coverage by the addition of floats for open wet moorage. Maximum float size above existing lot coverage or the lot coverage limit, whichever is greater, is thirty-six hundred (3600) square feet or an area equivalent to twelve (12) feet times the length of the pier, whichever is greater. An additional four hundred (400) square feet of coverage shall be permitted for an access ramp; existing floats may be increased in size up to this limit.

Therefore, the allowed amount of coverage for floating piers is the length of the existing pier, which is 538' x 12, which equals 6,456 sf, plus 400 sf for access ramps.
The proposal is for 6089.0 sf of floating pier structures, therefore this project meets the development standard for lot coverage.

Side setback requirements are as follows:
To facilitate access to moorage as required by Section 23.60.700, a side setback of fifty (50) feet from the nearest lot shall be required of all fixed pier structures, not including moorage floats. One-half (1/2) of an adjacent submerged street right-of-way may be used in meeting this requirement

Because the new structures are moorage floats no side set back is required.

Based on the above analyses no design constraints are required for this project to meet the relevant development standards at this site.

Impacts on the fish habitat and the aquatic environment will be mitigated through a number of proposed measures. The floats will be set back from the seawall to reduce the impediment of these structures on migrating salmon. Additionally, the design achieves 41% open area, which will allow ambient light to pass through the deck. Pultruded I-bar fiberglass grating will be used over the entire surface of floats. The grating is gray and 1.5 inches tall.

C. The Provisions of Chapter 173-27 WAC

WAC 173-27 establishes basic rules for the permit system to be adopted by local governments, pursuant to the language of RCW 90.58. It provides the framework for permits to be administered by local governments, including time requirements of permits, revisions to permits,

notice of application, formats for permits, and provisions for review by the state's Department of Ecology (DOE). Since the Seattle Shoreline Master Program has been approved by DOE, consistency with the criteria and procedures of SMC Chapter 23.60 is also consistent with WAC 173-14 and RCW 90.58. As discussed in the foregoing analysis, the proposal is consistent with the criteria for a shoreline substantial development permit and may be approved.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT

The Shoreline Substantial Development is **CONDITIONALLY GRANTED**. Conditions are listed at the end of this report.

ANALYSIS - SEPA

Disclosure of the potential impacts from this project was made in the following documents: the Environmental Checklist dated March 17, 2000, the Biological Evaluation (BE) dated July 14 2000, and a revised BE dated November 6, 2001. The information in the SEPA checklist, the supplemental information, and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, and certain neighborhood plans and other policies explicitly referenced, may serve as the basis for exercising substantive SEPA authority. The Overview Policy states, in part, *"Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation"* subject to some limitations. Under such limitations or circumstances (SMC 25.05.665 D) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate. Short-term and long-term adverse impacts are anticipated from the proposal.

Short-term Impacts

The following temporary or construction-related impacts are expected: temporary increase in noise levels, increase in water turbidity levels, increased levels of fugitive dust and fumes from the construction equipment, and displacement of fish wildlife species due to increased water turbidity levels, the installation of new piles, and increased noise from the construction activities. Due to the temporary nature and limited scope of these impacts, they are not considered significant (SMC 25.05.794). Although not significant, these impacts are adverse and, in some cases, mitigation may be warranted.

Several adopted codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these are: the Seattle Noise Ordinance (construction noise); and State Air Quality Codes administered by the Puget Sound Air Pollution Control Agency (air quality). In addition Federal and State regulations and permitting authority (Section 10 Permit, 404 Permit from the Army Corps and HPA permit from Washington Department of Fish and Wildlife) are effective to control short-term impacts on water quality. Compliance with these codes and/or ordinances will lessen the environmental impacts of the proposed project.

The applicant's BE discloses that the proposed construction work will take place in the waters of the Elliott Bay. Additionally, construction material will be delivered by barge over-water. With the proposed work taking place in water and the delivery of construction material taking place by barge to the in-water construction site, there exists the potential for debris and other deleterious material to enter the water during this proposed work. Best management practices (BMPs) should be employed to decrease the probability of debris or other deleterious material from entering the water during the proposed work. A boom should be deployed around the construction area to contain any debris that enters the water during construction. At a minimum the floating debris that enters the water during construction should be collected twice per day. This material should be contained on site and then disposed of at the appropriate upland facility. Additionally, to contain turbid water caused by the construction activities suspending sediments into the water column, a silt curtain shall be placed in the water during construction. The bottom of the curtain shall be fitted with a 1-inch-diameter steel pipe designed to keep the curtain near the sea floor. The top of the curtain will be fitted with floats to keep it suspended. If the design of the silt curtain will result in the silt curtain working as a containment boom, only the silt curtain will be required.

Construction material and equipment pose some potential danger of water contamination. The contamination from spills could lead to both water quality and aquatic habitat damage. In order to be prepared to provide a fast and effective response to spills or other actions which cause new contaminants to be introduced into the shoreline environment, it is necessary to condition the project to require that prior to commencing construction an emergency containment plan and procedures be developed and all necessary equipment be stocked on the site.

No further SEPA conditioning of potential short-term impacts appears to be warranted.

Long Term Impacts

Long-term coverage related impacts are also anticipated from the proposal and include: additional overwater coverage of 5361 sf and the addition 44 new piles which will occupy 61 sf of substrate. These long-term impacts are potentially significant without mitigation; therefore, merit a detailed discussion of the impacts and the required mitigation.

Plants and Animals

Chinook salmon, a species listed as threatened under the Endangered Species Act (ESA) in March 1999, are known to inhabit Lake Washington including the proposed project area. Under the City of Seattle's Environmental Policies and Procedures 25.05.675 N (2) it states in part: *A high priority shall also be given to meeting the needs of state and federal threatened, endangered, and sensitive species of both plants and animals.*

This project is proposed to take place in Elliott Bay, which is part of the migration corridor of chinook salmon from the Green/Duwamish River and other water bodies in the Puget Sound. This area can also serve as rearing ground for juvenile salmonids from rivers and streams that enter the Puget Sound.

Clearly identified long-term impacts on juvenile chinook salmon and the aquatic environment include the increase of overwater coverage at this site. Overwater coverage in the form of floats can impede migration of juvenile salmon and other fish and can occupy space otherwise

available for aquatic species. Additionally the shading that the overwater floating piers will cause can eliminate primary production and aquatic vegetation growth. The additional piles that are proposed will occupy substrate that is normally used by benthic and epibenthic organisms that are used by salmonids and other fish species as prey.

As provided by SMC 25.05.350 A, when making a threshold determination the lead agency may consider mitigation measures that the agency or applicant will implement. If the proposed measures mitigate the impacts, the lead agency could issue a Determination of Non-Significance (DNS). These mitigation measures can be in the form of clarification of the proposal, changes to the proposal, or the project may be conditioned to include the mitigation measures. As a result of review by the lead agency, changes to the proposal and conditions of the project have been included. The original design of this project was for a total overwater coverage area caused by the moorage floating piers to be 12,000 sf and the original location of these floats was proposed to be closer to the seawall in shallower water, which would result in greater impacts on macroalgae. Additionally, 65 new piles were originally proposed and no grating was provided in the deck of the floating piers. The changes to the project are listed below:

- Reduction in overwater coverage by 49%. The total overwater coverage proposed was reduced from 12,000 sf to 6089 sf.
- The location of the new floating moorage piers will be a minimum of 275 feet from the seawall in approximately 25 feet of water. This will reduce the impacts on the nearshore aquatic environment.
- Incorporation of light transmitting material into the surface of the deck. The entire surface of the floats will be Pultruded I-bar fiberglass grating. The grating is gray, 1.5 inches tall with 40% open area and will allow 41% of the ambient light to transmit through the deck.

Additional mitigation for the installation of 44 new piles will be imposed by the Washington Department of Fish and Wildlife (WDFW) during the Hydraulic Project Approval process.

Each of these mitigation measures and conditions are believed to minimize impacts on juvenile salmon habitat at the site. Collectively these measures will eliminate the dark areas that exist under the floating docks and provide for a migration corridor at the seawall.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

[X] Determination of Non-Significance. This proposal has been determined to not have significant adverse impacts upon the environment. An EIS is not required under RCW 43.21C.030.(2) (c).

[ ] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(c).

CONDITIONS – SEPA and Shorelines

Non-appealable Condition

Prior to Issuance of Building Permit:

1. Street Use permit from SDOT needs to be attained and provisions of the Street Use permit shall be followed.

SEPA and Shoreline –Prior to Issuance of Building Permit

1. An Emergency Procedures Plan shall be developed for the prevention, containment and clean-up for toxic materials for both the construction and the ongoing use of these moorage floats. This plan shall include the number of personnel that will be trained in these emergency procedures to ensure that these emergency procedures are implemented appropriately.

2. The owner(s) and/or responsible party(ies) shall notify in writing all contractors and sub-contractors of the general requirements of the Seattle Shoreline Master Program (SSMP 23.60.152), including the requirements set forth in conditions of the MUP.

3. The surface of the floats will be Pultruded I-bar fiberglass grating. The grating is gray, 1.5 inches tall with 40% open area and will allow 41% of the ambient light to transmit through the deck.

4. All new piles shall be made of steel.

5. The use of wood treated with creosote or pentachlorophenol is prohibited.

6. All lumber to be used for the project shall meet or exceed the standards established in "Best Management Practices for the Use of Treated Wood in Aquatic Environments" developed by the Western Wood Preservers Institute http://www.wwpinstitute.org/.

7. The conditions of the Hydraulic Project Approval (HPA) permit shall be conditions of this permit and shall be included on the plan sets.

SEPA and Shoreline – During Construction

The following conditions(s) to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DCLU. The

placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

1. Appropriate best management practices (BMPs) shall be employed to prevent debris and deleterious material from entering Elliott Bay during the proposed in-water work. BMPs should include the deployment of a containment boom and silt curtain at the construction area. If the design of the silt curtain will result in the silt curtain working as a containment boom, only the silt curtain will be required.

    a. The boom shall serve to collect any floating debris, which may enter the water during the construction activities. This floating debris shall be removed from the water twice daily, stored on-site, and then disposed of in the appropriate upland facility.

    b. If heavy (sinking) debris enters the water during the repair work, the location of the debris shall be documented in a log to be kept through the duration of the project. When construction is complete a diver shall retrieve all debris that has entered the water and sunk during construction.

    c. The silt curtain will serve to contain turbid water in the immediate project area.

2. Care shall be taken by the owner(s), builder(s), or responsible party(s) to prevent toxic materials, petrochemicals and other pollutants from entering surface water during the proposed repair work. Spill prevention and response plan and material shall be kept at the site for quick response to any toxic spills, such as fuel, at the site.

3. Personnel shall be trained in the plans and procedures for the prevention, containment and clean-up of toxic material.

4. Any lights that are installed on the float system shall be downlit, low level lights that are directed toward the float deck and not onto the water. Because of the grating on the deck the design of the lights shall be in a manner to prevent light from shining onto the water surface.

5. The surface of the floats will be Pultruded I-bar fiberglass grating. The grating is gray, 1.5 inches tall with 40% open area and will allow 41% of the ambient light to transmit through the deck.

6. All new piles shall be made of steel.

7. The use of wood treated with creosote or pentachlorophenol is prohibited.

8. All lumber to be used for the project shall meet or exceed the standards established in "Best Management Practices For the Use of Treated Wood in Aquatic Environments" developed by the Western Wood Preservers Institute http://www.wwpinstitute.org/.

SEPA and Shoreline – For the Life of the Project

1. Personnel should be trained in the plans and procedures for the prevention, containment and clean-up of toxic material.

2. Any lights that are installed on the float system shall be downlit, low level lights that are directed toward the float deck and not onto the water. Because of the grating on the deck the design of the lights shall be in a manner to prevent light from shining onto the water surface.

3. The surface of the floats will be Pultruded I-bar fiberglass grating. The grating is gray, 1.5 inches tall with 40% open area and will allow 41% of the ambient light to transmit through the deck. The surface and below the deck area will remain free from items including debris that will block the ambient light from reaching the surface of the water.

Signature: (signature on file) Date: September 1, 2003
Margaret M. Glowacki, Fisheries Biologist/Salmon Planner
Department of Design Construction and Land Use
Land Use Division

MMG:bg

Glowacm/DOC/Projects/2002115 - Pier70/2002115Decision.doc